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Public Hearing Date:	May 15, 2007
Land Use Action Date:	June 5, 2007
Board of Aldermen Action Date:	June 18, 2007
90-Day Expiration Date:	August 13, 2007

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development '
Nancy Radzevich, Chief Planner
Robert Merryman, Senior Planner

SUBJECT: Petition #91-07 of OMNIPOINT COMMUNICATIONS INC. /T-MOBILE INC/
CAPASSO REALTY CO. for SPECIAL PERMIT/SITE PLAN APPROVAL for
installation of 3 roof mounted wireless antennas inside a stealth chimney, a GPS and
a GSM/E911 antenna and associated equipment located at 181 Lexington Street,
Auburndale, MA, Ward 4 Section 41, Block 31, Lot 17 containing 44,780 sq. ft of
land in a Multi Residence 2 District.

CC Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioner is seeking a special permit to install three (3) wireless telecommunication antennas within a new "Faux. Chimney" and a GPS and GSM antenna which would be located at the base of the chimney on the roof of an existing 2% -story multi-family dwelling. Although most of the ancillary support equipment will be located in an 8' x10' equipment room within the attic, the petitioner is proposing to install a condenser unit on the ground, within the side yard towards the rear of the existing structure, which will be screened with three 3-4 ft. high evergreen shrubs.

ELEMENTS OF THE PETITION

T-Mobile is seeking approval to install three telecommunications panel antennas and a GPS on the roof of an existing 2½ story apartment building. The proposed panel antennas would be roof-mounted within a "Faux Chimney," near the rear of the building. The plans include a GPS and a GMS antenna, which are two separate antennas with two different functions to be attached to the base of the "Faux Chimney." GPS antennas are used by wireless companies to locate their antennas and for studying network gaps. GMS antennas are for 911 emergency location identification. The associated ancillary equipment will be located inside an 8 ft. x 10 ft. equipment room, within the attic. All the cables will be run from the antennas to the ancillary equipment through the attic space. In addition, the petitioner is proposing to install a new condenser unit, at the rear of the building. The condenser unit is a necessary component, which cools the wireless equipment in the attic. The petitioner is proposing to screen the condenser unit with 3-4 ft. tall evergreen shrubs.

The site is controlled by a Special Permit Board Order #13-69(3), which in 1969 approved a 29-unit brick apartment building with a small management office and 38 parking stalls. The apartment building along with several abutting properties was rezoned from Single Residence 3 to a Multi Residence 2 District (*via Board Order #13-69*) also in 1969. The Special Permit was for the use as a (at the time called) "Garden Apartment" which required a minimum 24,000 square feet of lot area, and maximums of 3,000 square feet of lot area per unit, 3 stories and 30 feet in height. Other technical requirements included 1.25 parking stalls per unit, 35 % lot coverage, 20 ft. front and 15 side yard setbacks.

II. ZONING RELIEF SOUGHT

Based on the Chief Zoning Code Official's review (SEE ATTACHMENT "A"), the petitioner is seeking approvals through or relief from the following sections of the zoning ordinance:

- > ***Section 30-18A (e)(6) — allows the Board of Aldermen to grant a special permit for building mounted wireless communication equipment on multi-family structures in a Multi Residence 2 District not otherwise allowed as-of-right;***
- > ***Section 30-18A (e)(10) — allows the Board of Aldermen to grant a special permit for locating ancillary equipment (HVAC Condenser) within the side yard rather than the rear yard as required;***
- > ***Section 30-18A (c)(6) & 30-15 Table 1 — allows the Board of Aldermen to grant a special permit for locating ancillary equipment (HVAC Condenser) within the required side yard setback of 14 ft. The condenser is proposed to be located 12.8 ft. from the side property line;***
- > ***Section 30-24 allows the Board of Aldermen to grant a special permit for building mounted wireless communication equipment when Sections 30-18A (a)&(c) of the Wireless Communications Ordinance have been satisfied;***
- > ***Section 30-23, for Site Plan Approval and for an amendment to the existing Site Plan Approval (B.O. #13-69(3), Condition #1); and***
- > ***Section 30-24, for an amendment to an existing special permit (B.O. #13-69(3)).***

III. SIGNIFICANT ISSUES FOR CONSIDERATION

In reviewing the petition, the Board of Aldermen should consider:

- *whether this is an appropriate location for a wireless installation;*
- *whether the wireless equipment is sufficiently screened from the abutters and/or surrounding neighborhood; and*
- *whether the location of the condenser unit within the side yard setback will have an adverse impact on the tenants of this building and/or the surrounding neighborhood*

IV. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The site consists of an approximately 44,780 square feet lot located on the north side of Lexington Street in Auburndale, and is improved with a 2 1/2-story brick apartment building (built in 1969) with parking in the rear. The property is well landscaped and maintained.



VIEW FROM LEXINGTON STREET



CLOSE VIEW OF REARYARD VIEW FROM REAR PROPERTY LINE

B. Neighborhood

The site is abutted to the north by the former Rumford Avenue Land Fill, and to the east and west the properties are improved with similar brick multi-family apartment buildings. Across Lexington Street, to the south are improved with predominantly Single-family dwellings with some two-family dwellings.

The subject site, the two abutting properties to the east, and west are within a Multi Residence 2 District. The City's Rumford Avenue Capped Land Fill to the north is within the Public Use District. Across Lexington Street, to the south is a Single Residence 3 District.

V. ANALYSIS

A. Design and Operating Criteria

The petitioner is proposing to install the 3 panel antennas onto poles within a new "Faux Chimney" that will be painted to look like a brick chimney. The petitioner is also proposing to install small GPS and GSM antennas to the base of the faux chimney; these will not be visible from the street because they will be located at the bottom of the base on the side facing the unused portion of the City's landfill. The panel antennas will be 72" x 13" x 4", the GPS antenna will be 7" x 4" (Diameter) and the GSM antenna which will be 15" X 2" (Diameter).

With the exception of a condenser unit, all of the ancillary equipment will be located within an 8 ft. x 10 ft. equipment room, located in the attic of the existing building. The cable connections will run from the antennas to equipment room through the attic. A condenser unit will be located on the ground next to the northwest corner of the existing apartment building. The equipment will be screened with evergreen shrubs and the connections will be run underground to an existing cable cover located on the north side façade of the building. The façade has four such cable covers already on the building two on the north and two on the south facing facades. These all terminate in the attic.

In accordance with Section 30-18A (e)(8), a special permit can be requested when associated ancillary equipment can not be located in the rear yard or comply with the required setbacks due to one or more of the following:

- the size of the rear yard;
- ♦ the location in the rear yard; and/or
- ♦ the aesthetic purposes of the ordinance would be better served by such alternate location.

Since the condenser unit can not be placed on top of the existing hipped roof, the only alternative is a ground location. The principal reason for locating the HVAC condenser on the side of the lot instead of the rear is due to the existing windows in the apartment building, which are at ground level, in the back and on side. In placing the condenser at the (side yard) northwest corner, the petitioner has tried to locate it as far away from the existing windows as possible.

The following criteria for wireless communications equipment are specifically designed to address issues relating to special permit for antenna installation, and cover the location of antennae and ancillary equipment, as well as screening and camouflaging. The proposed antenna installation compares with the Design and Operating Criteria in Section 30-18A(c) of the Zoning Ordinance as follows:

REQUIREMENT	COMPLIES		
	YES	No	N/A
1. A statement from a radio frequency engineer or other qualified engineer certifying that the standards of the 1996 Telecommunications Act have been met.	x		
2. The equipment must at all times be maintained in good and safe condition and comply with all applicable FCC standards and shall be removed within thirty (30) days of the date when all use of such equipment ceases. This applies to all wireless communication equipment and structures, including any existing equipment and structures	X		
3. The equipment should be sited, screened, painted or otherwise finished to blend in with the building or structure on which it is mounted in a manner that aesthetically minimizes the visibility of the equipment.	x		
4. Any fencing used to control access to the equipment should be compatible with its surroundings.			X
5. Equipment boxes for building-mounted equipment should be either interior to the building on which it is located, completely camouflaged, and/or completely screened from view from the public way.	x		
6. All freestanding wireless communication equipment should meet any setback requirements for the district in which it is located and should be screened from the public way.		X	
7. No part of building-mounted wireless equipment shall be located over a public way.	X		
8. Construction of the equipment should avoid major topographic changes and minimize the removal of trees and soil.	X		
9. Installation of wireless communication equipment shall avoid the removal or disruption of historic resources on and off-site.			X

10. Wireless communication equipment shall not be illuminated, except as required by state and federal law.	X		
11. Equipment owned and operated by an amateur radio operator shall be constructed at the minimum height necessary to accommodate communications in order to minimum the aesthetic impact.			X
12. Wireless communication should be maintained and operated in accordance with the City of Newton "Noise Ordinance." Applicants shall use best efforts to minimize noise from any external noise producing equipment, and should provide a report from a qualified acoustical engineer or other appropriate professional certifying that the proposed equipment meets the requirements of the Noise Ordinance.	X		

Although most of the ancillary equipment installation will comply with the Design and Operating Criteria established in Section 30-18A(c) of the Zoning Ordinance, the condenser unit will not comply with this standard. As such, a special permit is being requested. Further approval and relief is necessary due to the location of the condenser unit within the side yard instead of the rear yard, and due to the encroachment into the required 14 foot side yard setback by 1.2 ft.

B. Section 30-23; Site Plan Approval

The proposed installation of the condenser unit on the side of the apartment building requires approval from the Board for an alteration to the controlling site plan, approved through Board Order #13-69(3). As previously noted, the existing structure contains a hipped roof, which precludes the location of the unit on the roof. The Planning Department believes that the siting of this unit, at the northwest corner of the building, is an appropriate location.

The petitioner is proposing to screen the unit with a 3-4 ft. high evergreen shrubs. The petitioner has stated that the increase in noise level would be 3 (dba) at the property line, which is equivalent to a person whispering. It is our understanding that the attic cabinets would produce 62.5 dba.

C. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use/structure

Based on the information provided by the petitioner, the proposed installation is needed as part of a regional system to provide mobile phone service. The petitioner stated that there are no other viable options (for antenna installation) in the immediate neighborhood.

2. The use as developed and operated will not adversely affect the neighborhood

The petitioner is proposing to screen the three panel antennas inside a fiberglass "faux" chimney, which would be painted to match the existing chimney. The chimney would be located towards the rear of the building minimizing the view from residences on the south side of Lexington Street.

The GPS and the GSM antennas will located at the base of faux chimney and should have little if any visual impacts because they will be located at the bottom of the base on the side facing the unused portion of the City landfill.

The majority of the associated ancillary equipment will be located within an 8 ft. x 10 ft. equipment room, located within the attic. The petitioner has not presented any information regarding the dampening of noise and vibration for the tenants of the building, and should be expected to do so before scheduling this item for Working Session.

The condenser unit located on the ground would be placed in the side yard towards the rear of the building and would create very little noise. The petitioner has stated that the noise would be equivalent of a person whispering at the property line. The unit will be screened, visually, with 3-4 ft. high evergreen shrubs. The petitioner has not presented any information on the noise effect on the tenant next to the condenser, and should be expected to do so before scheduling this item for Working Session.

3. There will be no nuisance or serious hazard to vehicles or pedestrians

The proposal is for an unmanned wireless station. As such, there should be no serious hazard to vehicles or pedestrians associated with this proposal.

4. Access to the site over streets is appropriate for the types and numbers if vehicles involved

The petitioner estimates that only two trips per month will be necessary for the maintenance of the equipment. The Planning Department believes that this site contains adequate off-street parking to accommodate the limited, short-term parking needed associated with the routine maintenance, and as such, would not recommend any additional parking for this use.

VI. SUMMARY

The petitioner is proposing to locate 3 panel antennas, a GPS antenna, and a GSM antenna onto of an existing 2½ story apartment building in Auburndale. The proposed panel antennas are proposed to be located within a new fiberglass "faux" chimney painted to match an existing chimney. The GPS and GSM will located at the base of this faux chimney. Most of the associated ancillary equipment will be located in an 8 ft. x 10 ft. equipment room, located in the attic, and the cable connections from the equipment to the antennas will also be run through the attic space. Although a single condenser unit would be located within the side setback it will be screen with evergreen shrubs, should not be visible from the public way and/or abutting neighbors.

The petitioner should be expected to address the noise and vibration issues that may exist for tenants underneath the attic, and noise issues for the tenant located next to the condenser located on the ground before scheduling this item for Working Session.

Zoning Review Memorandum

Proposed Wireless Communication Installation

Dt: March 9, 2007

To: Adam F. Braillard, representing Omnipoint Communications, Inc.

Fr: Juris Alksnitis, Chief Zoning Code Official



Cc: Mike Kruse, Director of Planning and Development
John Lojek, Commissioner of Inspectional Services

Re: Proposed installation of wireless communication equipment on multi-family residential building in residential zone

Applicant: Omnipoint Communications, Inc.

Site: 181 Lexington St.

SBL: Section 41, Block 31, Lot 17

Zoning: MR-2

Lot Area: 44,780 sq. ft.

Use: Multi-unit apartment building

Type of Installation:

- ☐ Residential, per Section 30-18A(d)(1)*
- ☐ Amateur, per Section 30-18A(d)(2)
- ☒ Commercial interior-mounted, per Section 30-18A(d)(3)
- ☐ Commercial interior-mounted, located in residential districts, per Section 30-18A(d)(3)
- ☐ Commercial roof-mounted, located in residential districts, per Section 30-18A(e)(6)
- ☐ Commercial façade-mounted, per Section 30-18A(d)(5)
- ☐ Commercial interior-mounted, located in public use districts, per Section 30-18A(d)(6)
- ☐ Non-residential satellite earth station antennas, per Section 30-18A(d)(7)*

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The applicant has submitted a copy of the application to the Director of Planning and Development for Administrative Site Plan review, per Section 30-18A(g) for compliance with Section 30-18A(c).

Background:

The applicant states that no other wireless installation is currently present at the subject location. This site has been selected as a locus to cover a gap in cellular PCS coverage for T-Mobile service. The applicant seeks to install wireless communication antennae on the building

roof within a new faux chimney, related equipment within a new attic level equipment room, and an HVAC condenser unit at grade as follows:

- Three panel antennae mounted within a proposed new faux chimney to be placed in the rear area of the roof.
- One GPS antenna mounted low on the south side of proposed faux chimney.
- One GSM/E911 antenna mounted low on the south side of proposed faux chimney.
- One HVAC condenser unit located at grade on concrete pad adjacent to the building north side near the rear of the building.
- Proposed new equipment room to be located within attic level in general area of proposed faux chimney to house radio equipment cabinets.

The applicant seeks approval pursuant to Section 30-18A(e)(6), *Wireless Communication Equipment Allowed by Special Permit* for a building-mounted (roof placement) installation and location on a multi-family structure within a residential zone wherein such wireless equipment is not allowed as of right.

Administrative determinations

1. The subject site, a 29-unit apartment building, was developed pursuant to a special permit issued per Board Order #13-69(3), December 15, 1969. Condition #1 references the plan of record governing the site (see Materials and Plans Reviewed, below). As the proposed plan would locate a new HVAC unit serving the wireless installation in such a manner as to encroach on the side-yard, this necessitates an amendment of the original plan. Alternatively, the applicant may select a different HVAC location eliminating any setback encroachment, and thereby avoiding the need for such amendment. (Also see item 3., below.)
2. Section 30-18A(e)(6) requires a special permit for roof-mounted wireless communication equipment on a multi-family structure within a residential zone. A proposed lease agreement is currently under review by T-Mobile. In the interim, the property owner has agreed to allow the petitioner to undertake the permitting process as evidenced by copy of enclosed letter dated Dec. 12, 2006. A letter of assent evidencing owner's approval of the proposed installation, or copy of lease remains to be provided.
3. Certain ancillary equipment, i.e. one HVAC unit, is proposed to be located at grade adjacent to the north side of the building, 12.8 ft. from the side lot line. Section 30-15, *Table 1 – Density & Dimensional Controls in Residence Districts and for Residential Uses*, establishes a minimum side-yard setback of 14 ft. and a minimum rear yard setback of 15 ft. for garden apartment developments of this type in the MR-2 zone. As HVAC units are considered structures and the subject HVAC unit is to be located closer than 14 ft. to the side lot line on the north, this causes encroachment within the side yard setback and necessitates zoning relief by special permit pursuant to Section 30-18A(e)(10). While the applicant and owner prefer to locate the unit nearer the proposed equipment room, the applicant needs to explain how this meets the criteria enumerated in Section 30-18A(e)(10) in order to justify a special permit for such location as an alternate to a rear yard placement and also to justify the side-yard encroachment. It is noted that the other ancillary equipment will be placed in an equipment room to be constructed within the attic level, and does not trigger this provision.

4. The three proposed antennae panels to be mounted within the faux chimney having exterior brick color treatment matching the building will be entirely screened by this installation. The 1 GPS and 1 GSM/E911 antennae, respectively, will be mounted low on the south exterior side of the faux chimney, marginally above the peak of the roof and painted to match the brick color of the faux chimney. The faux chimney will extend 8 ft. above the roof peak placing the chimney top approximately 13.75 ft. above the roof/wall line. As Section 30-1, *Height*, excludes chimneys less than 15 ft. above the roof line from otherwise applicable building height measurement, the proposed installation will not alter the overall height calculation of the building, which currently conforms with the 30 ft. height limitation applicable in the MR-2 zone.
5. As this installation is located within an MR-2 zone, it is not subject to controls set out in Section 30-18A(d)(4) pertaining to installations located within a commercial zone. For illustrative purposes only, a comparison with the provisions of (d)(4) applicable to a commercial building 10-36ft. in height indicates that the proposed roof-mounted components would meet the edge-of-roof setbacks while the top of the proposed panel antennae will be located at or below 8 ft. above the roof peak and would not exceed the above-peak antenna height limitation of 10 ft.
6. The subject installation involves both "building-mounted" and "façade-mounted" components. As a result, Section 30-18A(e)(3) applies, which references the provisions of Section 30-18A(d)(5) pertaining to façade-mounted equipment. In this case, the proposed GPS and GSM/E911 antennae meet the placement requirements of 30-18A(d)(5).
7. The submitted plans and information comply with the Newton Zoning Ordinance unless otherwise noted below per the table titled "Summary – Wireless Installation Criteria".
8. See table "Zoning Relief Summary" below.

<i>Summary - Wireless installation Criteria</i>		
<i>Ordinance</i>		<i>Complies</i>
	<u>Residential Installation</u>	
30-18A(d)(1)	N/A	N/A
	<u>Amateur Installation</u>	
30-18A(d)(2)	N/A	N/A
	<u>Commercial Installation</u>	
30-18A(d)(3)-(5)	Located in Business, Industrial, or Mixed Use zone	N/A
30-18A(e)(3) 30-18A(d)(5)	Complies with requirements that façade mounted antennae do not extend above the face of any wall, extend not more than 18" from the face of the building or structures to which attached, and do not obscure any window or architectural feature.	Yes
	<u>Design and Construction Criteria</u>	
30-18A(c)(1)	Applicant has submitted a report from a qualified professional indicating compliance with Federal and Mass. laws and regulations pertaining to radio frequency emissions and related requirements.	Yes

Ordinance	Summary - Wireless Installation Criteria (cont.)	
	Design and Operating Criteria (cont.)	Complies
30-18A(c)(1)	Applicant has submitted a copy of the applicable FCC licenses.	Yes
30-18A(c)(2)	Applicant agrees to maintain equipment in good and safe condition and comply with all applicable FCC standards.	Yes
30-18A(c)(3)	Proposed installation is suitably screened and camouflaged.	Yes
30-18A(c)(4)	Fencing controlling access to installation is compatible with neighborhood.	N/A
30-18A(c)(5)	Equipment boxes must be located in interior of building, be completely camouflaged, or completely screened from view from the public way.	Yes
30-18A(c)(6)	Freestanding wireless installation must meet setback requirements; shall be screened from the public way; shall be located in the rear yard of the subject lot.	No
30-18A(c)(7)	No part of any building-mounted installation shall be located over a public way.	N/A
30-18A(c)(8)	Installation avoids major topographic changes; minimizes removal of trees and soil in a manner compatible with appearance of neighborhood.	Yes
30-18A(c)(9)	Installation avoids removal or disruption of historic resources on and off site.	Yes
30-18A(c)(10)	Illumination complies. (Installation will not be illuminated.)	Yes
30-18A(c)(11)	Complies with requirements pertaining to amateur radio operations.	N/A
30-18A(c)(12)	Applicant has submitted a report from a qualified acoustical engineer indicating installation complies with City of Newton Noise Ordinance.	Yes

-Ordinance	Zoning Relief Summary	
	Wireless Communication Installation	Action Required
30-18A(e)(6)	Approval of multiple roof-mounted antennae (3 panels within new faux chimney) on existing multi-family residential building in the MR-2 zone. Faux chimney to be painted to match color and texture of existin ^g building.	X
30-18A(e)(6)	Approval of 1 roof-mounted GPS antenna and 1 GSM/E911 antenna affixed to exterior south side of new faux chimney on a multi-family residential building in the MR-2 zone. Antennae to be sainted to match ^g ro sosed faux chimne in color and texture.	
30-18A(e)(6)	Approval of roof-mounted cable trays and related ancillary equipment on a multi-family residential building in the MR-2 zone.	N/A

Ordinance	Zoning Relief Summary (cont.)	
	Action Required	
	Wireless Communication Installation	
30-18A(e)(10)	Approval of ancillary equipment, i.e. 1 HVAC unit to be located at grade adjacent to north side of building instead of rear yard area.	X
30-18A(c)(6) 30-15, Table 1 30-18A(e)(10)	Approval of ancillary equipment, i.e. 1 HVAC unit to be located within 14 ft. side yard setback area at 12.8 ft. from side lot line.	X
	Extension of Non-conforming Structure	
30-21(b), 30-15, Table 1	Not applicable	N/A
	Site	
30-23	Approval of site plan and landscape plan.	X
30-23 BO#13-69(3), Cond.#1	Approval of amendment to existing site plan.	X
	Special Permit	
30-24(d)	Approval of special permit.	
30-24(d) BO# 13-69 3),	Approval of amendment to existing special permit.	X
	Bonin • Board of Appeals'	N/A
	N/A	

Plans & materials reviewed:

- Board Order #13-69(3), dated December 15, 1969 authorizing development of the site.
- Plan titled "Site Plan of Land in Newton, Mass.", dated May 1969, October, 1969, prepared by Barnes Engineering Company, Inc., 411 Lexington St., Auburndale, Mass.
- Information packet prepared by Adam F. Braillard of Prince, Lobel, Glovsky & Tye
- Radio frequency emissions report, March 5, 2007, by Rakesh Goel, RF Engineer
- Affidavit of compliance with Newton Noise Ordinance, February 14, 2007, by Marc. R. Chretien, PE, MRC Engineering, Inc.
- Plan set titled "181 Lexington St., Newton, MA 02465, Site No.: 4BN-1103-A", dated 11/28/06, last revised 3/6/07, prepared by Chappell Engineering Associates, 2352 Main St., Concord, MA 01742, stamped and signed by David Chappell, Registered Professional Engineer, consisting of the following:
 - > Sheet T-1, Title Sheet
 - > Sheet Z-1, Plot Plan, Roof Plan, and Notes
 - Sheet Z-2, Elevation Views
 - Sheet Z-3, Site Details